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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, AND THE STATE OF IOWA,
RONALD CALDER, INTERVENOR,
Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI

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QUESTION PRESENTED

Should the 1861 decision in *Kentucky* v. *Dennison*, which permits a state governor absolute discretion to shelter a fugitive from a sister state in violation of the Extradition Clause, finally be explicitly overruled?

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OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in Appendix A. The opinion of the District Court for the Southern District of Iowa, Central Division, not yet reported, appears in Appendix B.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on March 28, 1986. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2, Cl. 2 of the Constitution of the United States, the Extradition Clause, provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction over the Crime.

The Extradition Clause is implemented by the Extradition Act, 18 U.S.C. Section 3182, which provides that:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, district or Territory to which the person has

fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

STATEMENT OF THE CASE

The issue in this case is whether a state governor is free, in plain violation of the Extradition Clause of the federal Constitution, to make his state a safe asylum for an accused murderer who has fled from justice in the courts of a sister state. Two successive governors of Iowa have now refused the Commonwealth of Puerto Rico's request for the extradition of defendant Ronald Calder — notwithstanding that, as Iowa concedes, the Commonwealth's request fully complied with all constitutional and statutory requirements. In the face of this refusal to extradite, the Commonwealth sought a writ of mandamus in federal district court. The district court, however, deemed itself powerless to order the governor of Iowa to fulfill his plain constitutional duty, and the court of appeals below agreed. The sole reason given by each of the courts below for its inability to remedy a plain constitutional wrong was a lone and now ancient decision of this court: *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), which held that the duty of a governor to extradite a fugitive to a sister state upon proper request was mandatory, but unenforceable by a federal court. Petitioner contends that few cases could demonstrate as plainly as this one does why that decision must be reconsidered and overruled by this Court.

A. The Criminal Proceedings in Puerto Rico

In the mandamus action in the district court below, the parties stipulated to the following facts about the underlying criminal proceedings in the Commonwealth of Puerto Rico. *See* Appendix ("App.") A17-A21 (Stipulation of Facts). On January 25, 1981, Ronald Calder, the fugitive whose extradition the Commonwealth seeks in this case, ran down with his automobile Amy Villalba De Jesus, a woman eight months pregnant at the time. Stip. 1. Both she and her unborn child died hours later. Stip. 2. In the same incident, Calder's car struck Mrs. Villalba De Jesus' husband, Antonio De Jesus Gonzalez. Stip. 1. Calder was arrested, charged with homicide, and released later the same day. Stip. 3.

After a full probable cause hearing in Superior Court on February 4, 1981, at which sworn testimony was taken from fourteen witnesses and Calder was represented by counsel, Judge Benito Diaz Laureano found probable cause to charge Calder with the first-degree murder of Mrs. Villalba De Jesus and the attempted murder of Mr. De Jesus. Stip. 8; *see also* App. A28-A33 (informations filed by district attorney). The finding was based on testimony by witnesses at the hearing that Calder had deliberately driven his car into the De Jesuses after an argument with Mr. De Jesus in the parking lot of a grocery store, Stip. 6, and indeed that Calder had run his car back and forth over Mrs. Villalba De Jesus' body several times after first hitting her, Stip. 7.

Calder was freed after posting $5000 bail, but failed to appear at either of two subsequent preliminary hearings scheduled in his case. Stip. 9-13. On April 13, 1981, after a fruitless police search for Calder in and around his home, Judge Jose L. Capella Capella of the Superior Court issued an order declaring Calder a fugitive from justice, ordering warrants issued for his arrest, and raising bail to $300,000. Stip. 14; *see also* App. A25-A27.

B. The Request for Extradition

Calder was quickly traced by the Puerto Rico police to Iowa, and the relevant Iowa authorities notified. Calder surrendered to Iowa authorities and posted the $20,000 bond set by an Iowa magistrate. Stip. 15-17. A formal request for Calder's extradition was submitted by Governor Carlos Romero Barcelo of the Commonwealth of Puerto Rico to Governor Robert Ray of Iowa on May 15, 1981. Stip. 18. Accompanying the request were copies of the following documents: a warrant for Calder's arrest, the order declaring Calder a fugitive, the informations charging Calder with first degree murder and with attempted murder, two sworn statements establishing probable cause, and a sworn identification of a photograph of Calder. Stip. 19. The Governor authenticated their request, affirming that Calder had been charged with crimes under Puerto Rico law, that probable cause had been found by a duly constituted court of the Commonwealth, and that Calder was a fugitive from justice. App. A22-A23.

C. The "Extradition Hearing" in Iowa

There is no dispute that Governor Romero Barcelo's extradition request completely satisfied the requirements of the Extradition Clause of the United States Constitution, Article IV, Section 2, Cl. 2, the Congressional Act implementing the clause, 18 U.S.C. Section 3182, or the Uniform Criminal Extradition Act, 57A Iowa Code Annot. Sections 820.1-820.29 (1979); *cf.* 34 Laws of Puerto Rico Annot. Sections 1881-1881bb (1971). Counsel for the Governor of Iowa conceded as much in June 1981 when the extradition request was being reviewed, and the parties so stipulated in the district court below. Stip. 23.

Governor Ray nonetheless rejected Governor Romero Barcelo's fully sufficient request for reasons wholly independent of any failure to meet those constitutional and statutory requirements. At the request of Calder's counsel, Governor Ray ordered that a hearing be conducted by the governor's legal counsel on June 17, 1981. At that hearing, testimony was admitted — over the consistent objection of Puerto Rico's special prosecutor and its district attorney, Stip. 22 — ranging far beyond the constitutional and statutory requirements. Calder's four witnesses — himself, his two lawyers in the Puerto Rico proceedings, and his companion at the scene of the crime charged — were each permitted to testify. Stip. 21. Each expressed personal doubts about the quality of justice administered in Puerto Rico and the integrity of the Commonwealth's courts. One of Calder's lawyers, for example, was permitted to testify that, although he did not speak Spanish, he had had conversations with "anybody that [he] would run across" during a brief visit to Puerto Rico, leading him to believe that Calder, as "a white American man," "could not receive a fair trial in the Commonwealth of Puerto Rico." Appendix filed in the Eighth Circuit, at 78-79.[1] And Calder's companion at the scene of the killing was permitted to report hearsay to the effect that the Commonwealth of Puerto Rico would not let " 'gringos . . . leave the island alive.' " *Id.* at 86.

Following the extradition hearing, Governor Ray attempted to intervene on Calder's behalf by requesting a plea bargain from Governor Romero Barcelo, in order to "get the criminal charge to something more justifiable," in Governor Ray's opinion. Stip. 27; App. A44-A45. Puerto Rico officials discussed the possibility of a future plea agreement with Calder's repre-

[1] The extradition hearing was tape recorded, but only a partial transcript survives, because the State of Iowa destroyed the second of the two tapes. Stip. 25. A copy of the transcript of the first tape may be found in the record below (pages 65-99 of the Appendix filed in the Eighth Circuit).

sentatives, but maintained that under Puerto Rico law, no formal agreement could be concluded while Calder was a fugitive, and that any reduction of charges could be made only upon Calder's return to the Commonwealth. Stip. 26. On December 28, 1981, despite the conceded propriety of the extradition request and with no apparent basis other than the hearsay charges levelled by Calder's witnesses at the extradition hearing against the integrity of Puerto Rico's criminal justice system, Governor Ray formally denied the extradition request. Stip. 27.[2]

D. The Proceedings In the Mandamus Action Below

The Commonwealth of Puerto Rico filed a complaint seeking a writ of mandamus directing the Iowa Governor to grant the extradition demand in the United States District Court for the Southern District of Iowa on February 15, 1984.[3] The district court denied the writ and dismissed the complaint, considering itself bound by this Court's decision in *Kentucky* v. *Dennison* that, even though a Governor's duty to extradite is mandatory under the Constitution, that duty cannot be enforced by a writ of mandamus from the federal courts. App. A12-A14. Acknowledging that the reasoning underlying the holding of Dennison was clearly out-of-date, the district court could not "say with certainty that the Supreme Court would overrule *Kentucky* v. *Dennison* if confronted with the mandamus issue today." App. A14.

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[2] A renewed request for extradition to newly elected Iowa Governor Branstad was also denied. Stip. 28.

[3] The jurisdiction of the district court was invoked under 28 U.S.C. Section 1331. A motion for leave to file complaint had previously been filed with this Court based on its original jurisdiction. This motion was denied on January 9, 1984.

The United States Court of Appeals for the Eighth Circuit "reluctantly" affirmed, in an opinion and order issued March 28, 1986. App. A2. The court concluded that since Puerto Rico's extradition request "met all constitutional requirements," the Iowa Governor was "act[ing] in clear contravention of the Constitution in refusing extradition because he questions the severity of the crime" and was "sitting in judgment of Puerto Rico's actions . . . [and] accusing Puerto Rico of having a sub-standard [system] of criminal justice." App. A7 & n.7. Nonetheless, the Eighth Circuit felt "constrained" by its "[un]-certainty that the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today." App. A2, A4. In denying relief, the court unanimously concluded: "we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the Extradition Clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so." App. A9.

REASONS FOR GRANTING THE WRIT

As this Court has repeatedly recognized, the Extradition Clause was intended "to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed." *Michigan* v. *Doran*, 439 U.S. 282, 287 (1978), citing *Biddinger* v. *Commissioner of Police*, 245 U.S. 128, 132-33 (1917); *Appleyard* v. *Massachusetts*, 203 U.S. 222, 227 (1906). The purpose of the Clause was "to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among several states." *Michigan* v. *Doran*, 439 U.S. at 287.

The facts of this case reflect the complete frustration of these purposes. Five years after the killing of Mrs. Villalba De Jesus, Calder remains a fugitive from justice. Iowa has become Calder's "sanctuary" and Puerto Rico, having complied in every detail with the requirements for extradition, has been unable to enforce its criminal law. The quality and integrity of the judicial system of Puerto Rico have been attacked, and judged "sub-standard," by the executive branch of a sister state. The constitutional norms of comity and respect for each state's integrity on which the Extradition Clause is premised have been flagrantly and blatantly violated.

Nonetheless, both the district court and the court of appeals considered themselves bound by this Court's decision over 100 years ago in *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), that a federal court lacks power to remedy a state governor's clear violation of the Extradition Clause of the Constitution. That holding of *Kentucky* v. *Dennison* plainly frustrates the purposes of the Extradition Clause. It arose in a social context that no longer exists — a nation divided over the institution of slavery — and was based on legal theories of federalism that have long since been abandoned by this Court. *Dennison* should be reconsidered and overruled.

I. *DENNISON* SHOULD BE RECONSIDERED AND OVERRULED BECAUSE IT UNDERMINES THE PURPOSES OF THE EXTRADITION CLAUSE.

When the nation's founders established a federal system of government, they were faced with a choice between allowing each state to try fugitives accused of crimes in other states, and requiring fugitives to be returned to stand trial in the state where the crime had been committed. The Framers of the Con-

stitution left no doubt about their choice of the latter alternative; the Extradition Clause provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction over the Crime.

Article IV, Section 2, cl. 2.[4]

The constitutional duty of the asylum state to extradite fugitives upon the demand of another state is thus "articulated in mandatory language." *Michigan* v. *Doran*, 439 U.S. at 287. As this Court has repeatedly recognized, interstate extradition "was intended to be a summary and mandatory executive proceeding." *Id.* at 288. The Framers plainly rejected any regime of extradition at the discretion of the asylum state, for such discretion would defeat the fundamental purposes of the Clause:

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[4] It has never been suggested by any of the parties to this case, or any of the courts below, that Puerto Rico should be treated differently than a state for purposes of the Extradition Clause; and the decisions of this Court are plainly inconsistent with any such argument. *See, e.g., Kopel* v. *Bingham*, 211 U.S. 468, 474 (1909) (upholding New York governor's obligation to comply with extradition request by Puerto Rico) ("it was long ago held that the power to extradite fugitive criminals as between State and Territory is as complete as between one State and another"); *Rivera-Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1, 7-8 (1982) (due process and equal protection as well as other fundamental guarantees of the United States Constitution apply to Puerto Rico); *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1973) (Puerto Rico subject to the due process clause of the Constitution); *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 580-97 (1976) (Puerto Rico subject to the equal protection guarantee of the Constitution); *Terrol-Torres* v. *Commonwealth of Puerto Rico*, 442 U.S. 465, 469-71 (1979) (fourth amendment fully applicable to Puerto Rico). *See also Cordova & Simonpietri Ins. Agency, Inc.* v. *Chase Manhattan Bank*, 649 F.2d 36 (1st Cir. 1981).

"securing a prompt and efficient administration of the criminal laws of the several States — an object of the first concern to the people of the entire country, and which each State is bound, in fidelity to the Constitution, to recognize." *Appleyard* v. *Massachusetts*, 203 U.S. at 227-28; and "preventing [fugitives from] finding in one State an asylum against the processes of justice of another," *Biddinger* v. *Commissioner*, 245 U.S. at 132; *see Lacelles* v. *Georgia*, 148 U.S. 537 (1893). In short, the Framers of the Constitution made extradition mandatory in order that no state become "a shield for the guilty." *Biddinger* v. *Commissioner*, 245 U.S. at 132-33.

The statutes enacted by Congress and the states to implement the constitutional duty to extradite likewise speak in mandatory terms. In language virtually unchanged from its original enactment in 1793, Congress has provided that, "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, . . . the executive authority of [the asylum state] *shall* cause him to be arrested and secured, and notify the executive authority making such demand," and "*shall* cause the fugitive to be delivered" to the requesting state. 18 U.S.C. Section 3182 (emphasis added). Likewise, the Uniform Criminal Extradition Act, which has been enacted by forty-eight states, including Iowa, as well as by Puerto Rico and the Virgin Islands, provides that, upon demand, "it is the *duty* of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state." Uniform Criminal Extradition Act, Section 2, in 11 Uniform Laws Annot. (West 1974) at 61 (emphasis added).

Moreover, the federal and state extradition acts confer no discretion whatever on the governor of the asylum state to

second-guess the request of the demanding state, so long as the request is accompanied by appropriate documentation: "a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled." 18 U.S.C. Section 3182; *see also* Uniform Criminal Extradition Act, Section 3 (same requirement). On the contrary, the Uniform Criminal Extradition Act expressly forbids inquiry by the asylum state governor into the guilt or innocence of a fugitive whose extradition has been demanded in proper form. Uniform Criminal Extradition Act, Section 20, in 11 Uniform Laws Annot. (West 1974) at 270.[5]

The absolute and mandatory nature of this constitutional process for interstate extradition was fully recognized by this Court in *Kentucky* v. *Dennison*. As Chief Justice Taney wrote for the Court, after an exhaustive review of the history and purposes of the Extradition Clause and its implementing statutes, the duty of an asylum state governor presented with a proper extradition request is "merely ministerial." 65 U.S. at 107. That governor "has no right to look behind . . . or to question" the criminal charges of the demanding state, "or to look into the character of the crime specified." *Id.* Any such second-guessing, wrote Taney, "would render the clause useless for any practical purpose." *Id.* at 102.

This much of *Kentucky* v. *Dennison*, of course, is now well-established law. *See Pacileo* v. *Walker*, 449 U.S. 86, 87-

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[5] Likewise, even if a fugitive, upon arrest in the asylum state, contests the validity of his arrest and seeks a writ of habeas corpus in the asylum state's courts, this Court has forbidden the habeas court from undertaking any inquiry into issues of the accused's guilt or innocence. *Michigan* v. *Doran*, 439 U.S. at 289 (limiting habeas court's inquiry to the facial propriety of the extradition papers and the identity and status of the suspect).

88 (1980) (per curiam); *Michigan* v. *Doran*, 439 U.S. at 288; *Sweeney* v. *Woodall*, 344 U.S. 86, 90 (1952). Petitioner contests only the ultimate holding of *Dennison* — that if a governor does choose to second-guess the demanding state's criminal process in violation of his mandatory duty, as did Governor Ray of Iowa here, the federal government is powerless to do anything about it. *See Kentucky* v. *Dennison*, 65 U.S. at 109-10. Under that holding, the federal courts lack authority to review a governor's refusal to extradite. Under that holding, even *Congress* is barred from mandating extradition, and the compulsory language of the federal Extradition Act is virtually nullified.

By completely insulating state governors' extradition decisions from federal oversight, *Kentucky* v. *Dennison* converts the mandatory duty imposed by the Constitution into a wholly discretionary decision of the asylum state's executive.[6] It thus wholly undermines the purposes of the Extradition Clause, improperly rendering state governors' discretion supreme over the federal Constitution and federal law. *See Testa* v. *Katt*, 330 U.S. 386, 393 (1947); *FERC* v. *Mississippi*, 456 U.S. 742, 763 n.28 (1982) ("*Testa* . . . placed the obligation of state officials to enforce federal law squarely in the Supremacy Clause.").

First, the asylum state governor is left free by *Kentucky* v. *Dennison* to frustrate the Constitution's concern "to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed," *Michigan* v. *Doran*, 439 U.S.

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[6] Nor is relief from a governor's refusal to extradite available in state forums. In *South Dakota* v. *Brown*, 576 P.2d 473 (1978), for example, the California Supreme Court, relying on *Dennison*, held itself powerless to order Governor Jerry Brown to comply with South Dakota's request for the extradition of Dennis Banks, the Native American activist who had been convicted in South Dakota of riot while armed with a dangerous weapon and assault with a dangerous weapon with intent to kill — notwithstanding the mandatory language of the Uniform Extradition Act, *see* Calif. Penal Code Sections 1549.2, 1548.1.

at 287. At best, *Dennison*'s holding of impunity for a recalcitrant governor allows him to delay extradition while he considers whatever issues he chooses, meanwhile forcing the requesting state to defend the integrity of its processes in the executive branch of another state. At worst, *Dennison* permits a recalcitrant governor unilaterally to block the requesting state from enforcing its criminal laws at all.

There can be no doubt whatever that the integrity of each state's ability to enforce its criminal laws is "an object of the first concern." *Appleyard* v. *Massachusetts*, 203 U.S. at 227-28. For just that reason, this Court has repeatedly rejected the claims of criminal defendants to anticipatory relief against valid, ongoing state criminal prosecutions. *Younger* v. *Harris*, 401 U.S. 37 (1971). *See also O'Shea* v. *Littleton*, 414 U.S. 488, 499-501 (1974). This Court has insisted that "[n]o citizen is immune from prosecution, in good faith, for his alleged criminal acts." *Younger* v. *Harris*, 401 U.S. at 46, quoting *Watson* v. *Buck*, 313 U.S. 387, 400 (1941); *Beal* v. *Missouri Pacific R.R.*, 312 U.S. 45, 49 (1941). Yet just such immunity, which this Court has denied to a state criminal defendant who seeks refuge in a federal court, is effectively granted by *Kentucky* v. *Dennison* to that same defendant so long as he seeks asylum instead with a sympathetic governor in another state.

Second, *Kentucky* v. *Dennison* leaves an asylum state governor free to frustrate the Constitution's "concern for . . . comity in extradition," *Michigan* v. *Doran*, 439 U.S. at 296 (Blackmun, J., concurring in result), by leaving him free with impunity to sit in judgment of the demanding state's courts. Indeed, the "extradition hearing" conducted by Governor Ray of Iowa here amounted to nothing less than a direct attack on the integrity of the courts of the Commonwealth of Puerto Rico.[7]

[7] By comparison, the Michigan court's "delv[ing] into the niceties of the underpinnings of the demanding State's probable-cause determination" forbidden by this Court in *Michigan* v. *Doran*, *see* 439 U.S. at 297 (Blackmun, J., concurring in result), was mild.

The sole focus of that hearing was the quality of justice afforded by Puerto Rico's judiciary. Hearsay testimony elicited from the fugitive and his lawyers, grounded in plain self-interest and smacking of racism, attacked the ability of Puerto Rico's courts to impanel impartial juries, protect criminal defendants, and guard against perjured testimony. *See* Statement of the Case, *supra* at 5-6. And as the court of appeals recognized, Governor Ray's decision after that "hearing" to refuse to extradite Calder amounted to his "sitting in judgment of Puerto Rico's actions . . . . [and] accusing Puerto Rico of having a sub-standard [system] of criminal justice." App. A7 n.7.

No state should be required to defend its procedures and its commitment to justice before an employee of a sister state's governor, on pain of losing its right to enforce its criminal laws, as the Commonwealth of Puerto Rico was here. Any such procedure brings about the very balkanization and interstate friction which the Extradition Clause was intended to prevent. Such procedures destroy the "harmony and welfare of the States," *Appleyard* v. *Massachusetts*, 203 U.S. at 228, leading to discord in interstate relations, retaliation between states, and animosity between their governors.[8]

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[8] For example, the refusal by the Governor of New York of a request to extradite a fugitive from Georgia led to a public dispute in which Georgia Governor Richard B. Russell denounced the action as a "deliberate and wanton insult." *See* New York Times, Dec. 23, 1932, p. 7, cols. 1-2; Dec. 28, 1932, p. 36, col. 4. The Governor of New York, attacked as well by Georgia's Congressmen, responded by pointing to prior refusals to extradite by other governors, including Russell himself. *Id.* In another request from Georgia, Massachusetts Governor Hurley's refusal to extradite led to a long-standing personal feud with Georgia Governor Rivers, who retaliated by paroling a prisoner on the condition that the prisoner go directly to Massachusetts. *See* New York Times, Sept. 2, 1937, p. 8, cols. 4-5; Sept. 3, 1937, p. 6, col. 6. *See generally* Note, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 Yale L. J. 97, 110-111 & n.74 (1956).

For a more recent example of the discord produced by a refusal to extradite, *see South Dakota* v. *Brown*, 576 P.2d 473, 483 (Cal. 1978) (Mosk, J., dissent-

If Ronald Calder has any defenses to offer, they may be fully presented and litigated in the courts of the Commonwealth of Puerto Rico.[9] This Court has consistently rejected claims

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ing) (terming California Governor Jerry Brown's refusal to extradite radical Native American activist Dennis Banks, convicted in South Dakota of riot and assault with a deadly weapon, "a contemptuous rebutt to the administration of justice in a sister state and a blow to cooperative law enforcement among states.").

[9] The criminal due process rights of all persons in Puerto Rico are protected by the Federal Constitution to the same extent as in any state of the Union. *See Rivera-Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1, 7-8 (1982) (due process and equal protection as well as all other fundamental guarantees of the United States Constitution apply to Puerto Rico); *Terrol-Torres* v. *Commonwealth of Puerto Rico*, 442 U.S. 465, 469-71 (1979) (due process, equal protection and the constitutional requirements of the fourth amendment apply to the Commonwealth of Puerto Rico). Puerto Rico is a state for the purposes of 42 U.S.C. Section 1983, and the United States District Court for the District of Puerto Rico has jurisdiction under 28 U.S.C. Section 1343(3) to redress the deprivation of rights secured by the Federal Constitution or federal civil rights statutes. *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 580-97 (1976).

The Bill of Rights of the Commonwealth Constitution, adopted by the people of Puerto Rico in 1952 and approved by Congress, 66 Stat. 327, 48 U.S.C. Section 731(c), incorporates all of the guarantees included in the Bill of Rights of the Federal Constitution that are applicable to states, with the only exception being trial by jury for misdemeanors, *see* Constitution of the Commonwealth of Puerto Rico, Art. II, sections 1-20, L.P.R.A. vol. 1 (1982); and even as to this exception, the Puerto Rico Rules of Criminal Procedure provide for jury trial not only in felony cases but also in serious misdemeanor cases where a sentence of 6 months or more may be imposed, as required by this Court for state criminal trials, *see Duncan* v. *Louisiana*, 391 U.S. 145 (1968); *Baldwin* v. *New York*, 399 U.S. 66 (1970); *Apodaca* v. *Oregon*, 406 U.S. 404 (1972). *See* 34 L.P.R.A. App. II R. 111. The substantive and procedural criminal laws of Puerto Rico are similar to those existing in most of the states of the Union. *See* Puerto Rico Penal Code of 1975, 33 L.P.R.A. 3021 to 4628 (1983) and Puerto Rico Rules of Criminal Procedure, 34 L.P.R.A. App. II, R. 1 to 254 (1971). Puerto Rico's judicial system has been described as "an example to be emulated and a model to be followed." Clark and Rogers, *The New Judiciary Act of Puerto Rico: A Definitive Court Reorganization*, 61 Yale L.J. 1147 (1952). *See also* Trias Monge, El Sistema Judicial de Puerto Rico 112-234 (1978); Negron Garcia, *Puerto Rico Updates its Courts*, 58 J. Am. Jud. Soc. 350 (1975).

premised on the assumption that state courts are not capable of fully and effectively protecting constitutional rights. *See, e.g., Stone* v. *Powell,* 428 U.S. 465, 493-94 n.35 (1976). Indeed, in the extradition context, this Court has repeatedly rejected both state and federal courts' attempts, upon review of habeas corpus petitions brought by fugitive criminal defendants, to evaluate the quality of the extraditing state's criminal justice system. *Pacileo* v. *Walker,* 449 U.S. at 86, 87 (holding that "Art. IV, Section 2, cl. 2, and its implementing statute, 18 U.S.C. Section 3182, do not give the courts of the 'asylum' or 'sending' State authority to inquire into the prison conditions of the 'demanding' State"); *Sweeney* v. *Woodall,* 344 U.S. at 90 (holding that a fugitive from Alabama could not raise in the federal courts of Ohio, the asylum state, the constitutionality of his confinement in Alabama because his claims could be fully litigated in Alabama, "where all parties may be heard, where all pertinent testimony will be readily available, and where suitable relief, if any is necessary, may be fashioned.").

Likewise in this case, "[t]o allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purposes of the summary and mandatory procedures authorized by Art. IV, Section 2." *Michigan* v. *Doran,* 439 U.S. at 290. To the extent *Kentucky* v. *Dennison* permits such frustration of the Constitution, it should be reconsidered and overruled.

II. *DENNISON* SHOULD BE RECONSIDERED AND OVERRULED AS AN OUTDATED, NINETEENTH CENTURY VIEW OF THE LIMITS OF FEDERAL POWER.

The ultimate holding of *Kentucky* v. *Dennison* is grounded in legal theories of dual federalism long since abandoned by

this Court. While *Dennison*'s first holding — that the duty to extradite is a mandatory obligation, not a discretionary function — has been repeatedly reaffirmed, *see Pacileo* v. *Walker*, 449 U.S. at 87-88; *Michigan* v. *Doran*, 439 U.S. at 288; *Sweeney* v. *Woodall*, 344 U.S. at 90, its second holding — that the federal government lacks power to enforce the Constitution by compelling state officials to act — has clearly been undermined by the decisions of this Court in the post-Civil War era.

Chief Justice Taney's ruling in *Dennison* cannot be understood apart from the context in which the case was decided: the growing schism between the North and the South over slavery. The fugitive in *Dennison*, Willie Lago, was wanted in Kentucky for aiding a slave in escaping from her owner. Dennison, the Governor of Ohio, a free state, refused to extradite him. An original action was brought in the United States Supreme Court. At the time the case was argued, February 1861, "the states of the Deep South had already proclaimed their secession from the Union, their representatives in Congress had said their farewells, and other states and representatives were about to go." C. Swisher, *History of the Supreme Court of the United States, Vol. V: The Taney Period (1863-64)* 688 (1974). At that troubled moment in our nation's history, there was clearly "an element of unrealism in considering coercion of the states, or of their governors, by the hands of the federal judiciary." *Id.*

Against this background, Chief Justice Taney, writing for the Court, reviewed in detail the history of the extradition clause and concluded that Governor Dennison's refusal to extradite was a clear violation of the duty imposed by the Constitution.[10] In the final pages of the opinion, however, the Court

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[10] In *Dennison* itself, the asylum state had not claimed total discretion, but only the authority to refuse to extradite where the offense charged in the demanding state was not an offense under the law of the asylum state. Murder and attempted murder do not involve any such controversial activity; they are

nonetheless averted a showdown and denied relief. The ground asserted was an extreme view of the limits of federal power with respect to the states: "[T]he Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State." 65 U.S. at 107-08.

That view had been thoroughly rejected by this Court by the turn of the century. Since *Ex Parte Young*, 209 U.S. 123, 159-160 (1908), the federal courts have assumed the obligation and the responsibility to order state officials to comply with the mandates of the Constitution. In rejecting the claim of the state attorney general to eleventh amendment immunity in *Ex Parte Young*, the Court held that sovereign immunity could not be invoked to shield unconstitutional state action from federal judicial scrutiny: "[The] use of the name of the State to enforce an unconstitutional act . . . is a proceeding without . . . authority . . . which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting to use the name of the State to enforce a legislative enactment which is void because unconstitutional." *Id.* at 159.

In the decades since that decision, this Court has, time and time again, upheld the authority of federal courts to order local officials to comply with the Constitution, notwithstanding local opposition. *See, e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Brown* v. *Board of Education II*, 349 U.S. 294

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universally condemned as crimes. Thus, even under the approach advanced by Ohio in *Dennison*, and rejected by the Court, extradition would be mandatory in the circumstances of this case.

(1955); *Cooper* v. *Aaron*, 358 U.S. 1 (1958). *See also United States* v. *Nixon*, 418 U.S. 683, 704 (1974) (power vested in the federal courts cannot be shared with the Executive). Claims that such decisions burdened the exercise of local functions have been rejected. The Court has repeatedly reaffirmed that federal courts may, if necessary, require local officials "to exercise the power that is theirs to levy taxes to raise funds" adequate to remedy constitutional violations. *Griffin* v. *Prince Edward County School Board*, 377 U.S. 218, 233 (1964). *See also Swann* v. *Charlotte Mecklenburg Board of Education*, 402 U.S. 1 (1971). It has directed federal courts to order local officials to reorganize state legislative bodies, *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and restructure local governmental units, *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), to meet constitutional requirements. In each of these areas, it bears emphasizing, federal courts have done precisely what Chief Justice Taney in *Dennison* said that the federal government may not do: ordered state officers to conduct their business and perform their duties consistent with the Constitution.

Indeed, even where what is at stake is a law passed by Congress rather than a constitutional duty, and even where the state has claimed reserved power under the Constitution itself, this Court has rejected the sort of limits on federal power which *Dennison* would demand. The insistence that states must in all circumstances be viewed as coequal sovereigns with the federal government — the "dual federalism" approach that characterized the Taney Court's approach in *Dennison*, as in *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393 (1857) and *New York* v. *Miln*, 36 U.S. (11 Pet.) 102 (1837) — was firmly laid to rest by the decisions of this Court upholding congressional legislation enacted during the New Deal. *See, e.g.*, *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *United States* v. *Darby*, 312 U.S. 100 (1941); *Steward Machine Co.* v. *Davis*,

301 U.S. 548 (1937); *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

More recently, in *FERC* v. *Mississippi*, 456 U.S. 742 (1982), this Court rejected a state challenge to the right of Congress to order state officials to consider federal standards and follow federally-imposed procedures in regulating public utilities. The state's argument relied explicitly on Chief Justice Taney's language in *Kentucky* v. *Dennison*. Characterizing that approach as a "rigid and isolated statement" from a "well-known slavery case" which "is not representative of the law today," the Court emphasized the many instances "where the Court has upheld federal statutory structures that in effect directed state decisionmakers to take or to refrain from taking certain actions." 456 U.S. at 762, citing *Fry* v. *United States*, 421 U.S. 542 (1975); *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979); *Testa* v. *Katt*, 330 U.S. 386, 393 (1947). The "language and analysis of the *Dennison* case of the preceding century," the Court concluded, has been "clearly cut back." 456 U.S. at 762-63.

Finally, only last Term, this Court in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985), rejected the claim of a local transit authority to immunity from federally imposed minimum wage and pay provisions. In the process, this Court not only overruled prior efforts to limit federal power under the Commerce Clause by isolating the "traditional governmental functions" of states, but also concluded that the structure of the federal government itself was the means chosen by the Framers to secure the role of states. *Id.* at 1016-20. The rationale for *Dennison* — the fear that absent the restraints of dual federalism, federal power might be used to "overload" the state officer with duties, to "disable him from performing his obligations," to impose duties beneath his "rank and dignity," 65 U.S. at 107-08 — stands squarely

rejected by this Court's recognition that state sovereign interests "are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." 105 S.Ct. at 1018.

The case for the exercise of federal power in this context is even stronger than in either *FERC* v. *Mississippi* or *Garcia*. First, what is at stake here is not an act of Congress, as in those cases, but a mandate of the Constitution. Second, what is involved is not a realm of discretionary state authority, like utility regulation or wage scales for state employees, but a mandatory and ministerial duty to comply with valid extradition requests. Third, and most important, it is the *absence* of federal power that threatens the autonomy of each state to enforce its criminal laws. However the limits which state sovereignty imposes on federal power are ultimately defined, *see Garcia* v. *San Antonio Metropolitan Transit Authority*, 105 S. Ct. at 1015-20; *id.* at 1038 (O'Connor, J., dissenting), they must surely permit, and indeed require, the exercise of federal power to compel extradition. For far from intruding on any state sovereignty arguably protected by the tenth amendment, federal power here is essential to ensure that the mandatory commands of the Constitution, intended to protect the sovereignty of each state to bring to trial those who violate its criminal laws, are followed.

Dennison's view of the limits of federal power is, as this Court has recognized, a "19th-century view." *FERC* v. *Mississippi*, 456 U.S. at 761. Yet while it has been abandoned in virtually every other context, it continues to frustrate the effectuation of the purposes of the Extradition Clause. Until *Dennison* is reconsidered and overruled, the rights of every state to secure the enforcement of its criminal laws are in jeopardy. *Dennison* shields every refusal to extradite from judicial scrutiny — no matter how arbitrary, how insulting to a state's integrity, how offensive to norms of comity, or how racist that refusal may

be. It precludes the federal courts, and this Court, from serving as the needed referee in such disputes between the states, and from assuring that the Framers' purpose in including the Extradition Clause — that no state become an asylum for fugitives from justice — is served. Until *Dennison* is overruled, Ronald Calder, properly charged with murder five years ago, can refuse to answer those charges with impunity, having found an asylum in Iowa, and there is absolutely nothing that Puerto Rico can do to bring him to trial.

CONCLUSION

The court of appeals affirmed the denial of mandamus relief with the greatest reluctance. Speaking for a unanimous court, Judge Timbers wrote:

> Despite our firm belief in the proper role of the inferior federal courts in adhering to and not seeking to avoid controlling Supreme Court precedent, we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the extradition clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so. Perhaps the extradition principles articulated in *Dennison* are in the category so aptly described by Judge Cardozo as being infused with "the doubts and misgivings, the hopes and fears, [all] part of the travail of mind, the pangs of death and the pangs of

birth, in which principles that have served their day expire, and new principles are born."

App. A9. Petitioner Commonwealth of Puerto Rico respectfully urges this Court, "the only Court empowered to do so," to reconsider and overrule *Kentucky* v. *Dennison*.

Respectfully submitted,

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June 23, 1986

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APPENDIX A

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 85-1793

Commonwealth of Puerto Rico,	*	
	*	
Plaintiff-Appellant,	*	Appeal from the
	*	United States District
v.	*	Court for the Southern
	*	District of Iowa,
Terry E. Branstad, et al.,	*	Central Division.
	*	
Defendants-Appellees.	*	

Submitted: February 14, 1986
Filed: March 28, 1986

Before ARNOLD, FAGG and TIMBERS,* Circuit Judges.

TIMBERS, Circuit Judge.

The Commonwealth of Puerto Rico ("appellant") appeals from a judgment entered May 22, 1985 in the Southern District

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*The Hon. William H. Timbers, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

of Iowa, Donald E. O'Brien, *District Judge*, denying appellant's petition for a writ of mandamus to compel Terry E. Branstad, the Governor of Iowa ("appellee"), to extradite Ronald Calder to Puerto Rico, and dismissing the complaint. In denying the petition and dismissing the complaint, the district court relied on *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), where the Supreme Court held that the federal judiciary lacks the power to compel a state governor to perform his ministerial duty to extradite a fugitive upon receiving a valid demand.

On appeal, appellant recognizes that *Dennison* is controlling. It argues, however, that *Dennison* is no longer binding on the lower federal courts because it is premised on a defunct theory of federalism and the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today.

We are constrained to hold that appellant has failed to establish that the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today. Accordingly, we hold that the district court correctly held that it lacked the power to issue a writ of mandamus compelling appellee to extradite Calder, even though appellant's extradition request met all constitutional requirements. Reluctantly, we affirm.

I.

We summarize only those facts believed necessary to an understanding of the issues raised on appeal.

The Commonwealth of Puerto Rico has charged Calder with murder and attempted murder. The charges arose out of an altercation in a parking lot in Aguadilla, Puerto Rico, on January 25, 1981. Calder is charged with having run over Antonio de Jesus Gonzalez and his pregnant wife more than once. The woman and her baby died shortly thereafter.

Several hours after the incident, Calder was charged with homicide and released on bail. When Calder subsequently failed to appear for several preliminary hearings, he was declared a fugitive from justice and an arrest warrant was issued. An investigation by the Puerto Rican authorities established that Calder in mid-April 1981 had returned to his native state of Iowa.[1]

On May 15, 1981, the Governor of Puerto Rico, Carlos Romero Barcelo, formally requested the extradition of Calder from the then Governor of Iowa, Robert D. Ray, pursuant to Art. IV, § 2, cl. 2 of the United States Constitution and the Extradition Act, 18 U.S.C. § 3182 (1982). Although the extradition request complied with all constitutional and statutory requirements,[2] the Governor of Iowa, after hearing evidence, denied the extradition request on December 28, 1981. In so doing, he stated that he felt that the first degree murder charge was too severe and that a charge of manslaughter was more justifiable. Thereafter, appellant renewed its extradition request to appellee, Governor Branstad, who succeeded Robert Ray as Governor. Governor Branstad also refused to extradite Calder.

Faced with appellee's adamant refusal to extradite Calder, appellant commenced the instant action requesting the district court to issue a writ of mandamus directing appellee to perform his ministerial duty of granting extradition and delivering Calder to the Puerto Rican authorities.[3] The complaint alleged

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[1] On April 13, 1981, the Puerto Rican police notified the Polk County, Iowa, Sheriff's office that Calder was a fugitive wanted for murder and attempted murder in Puerto Rico, and extradition papers would follow. On April 24, 1981, Calder surrendered to the jurisdiction of the local court in Polk County.

[2] Under the Extradition Act, the demanding-state governor must produce an affidavit or indictment charging the demanded fugitive with a crime, and he must personally certify its authenticity. 18 U.S.C. § 3182 (1982).

[3] Appellant also sought declaratory relief to the effect that, in denying extradition, the Governor of Iowa considered matters not allowed by the Constitution.

that appellee had breached his ministerial duties mandated by the extradition clause of the Constitution in refusing to extradite Calder upon receiving a valid demand.

Appellee filed a motion to dismiss in the district court, claiming that *Dennison, supra,* precluded the issuance of a writ of mandamus because in *Dennison* the Supreme Court had held expressly that a governor could not be compelled to perform his duty to extradite. Appellant acknowledged that *Dennison* is controlling, but argued that *Dennison* is no longer binding on the lower federal courts because it is predicated on pre-civil war concepts of state sovereignty. Appellant further argues that the Supreme Court would overrule *Dennison* if confronted with the same issue today.

On May 22, 1985, the district court entered a judgment denying the writ of mandamus and dismissing the complaint on the ground that it could not be said with certainty that the Supreme Court would overrule *Dennison* if the same issue were presented today.

II.

In *Dennison, supra,* 65 U.S. at 95-110, the Supreme Court, in an opinion by Chief Justice Taney, examined the extradition process provided for in the extradition clause of the Constitution, Art. IV, § 2, cl. 2,[4] and the Extradition Act, 18 U.S.C. § 3182.[5]

The district court dismissed the declaratory judgment claim on the ground that the issuance of a declaratory ruling would do little to settle the controversy over the extradition of Calder. Appellant withdrew its declaratory judgment claim on appeal.

[4] The Extradition Clause of the Constitution provides:

> "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

[5] The Extradition Act of 1793, which has remained virtually unchanged since it was enacted, provides:

The Governor of Kentucky in *Dennison* sought a writ of mandamus to compel the Governor of Ohio (named Dennison) to extradite Willis Lago, a "free man of color", who had been indicted by a Kentucky grand jury for the crime of assisting a slave to escape from his master and was a fugitive from justice. Governor Dennison refused to extradite Lago because his action were not illegal under Ohio law.

The Supreme Court declined to issue the writ. In declining to do so, the Court established what strike us as two contradictory rules. First, the Court held that a governor's duty to extradite, as established by the Constitution and the Act of 1793, was "ministerial". In defining the nature of this "ministerial" duty, the Court stated that it was a mandatory duty that required an asylum state governor to extradite upon demand. *Dennison, supra* 65 U.S. at 106. The Court recognized that an asylum state's governor has "no right to look behind [the extradition request], or to question [it], or to look into the character of the crime specified in the judicial proceedings." *Id.*

Second, having concluded that a governor's duty to extradite is mandatory and that an asylum state's governor is foreclosed from exercising any discretion in carrying out that duty, the Court nevertheless denied the writ because it found that the Act of 1793 did not provide a means to compel execution of the

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"**Fugitives from State or Territory to State, District or Territory**

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

duty. "The act does not provide any means to compel the execution of this duty, nor inflict any punishment or neglect or refusal on the part of the Executive of the State; nor is there any clause or provision in the Constitution which arms the Government of the United States with this power." *Dennison, supra,* 65 U.S. at 107. Thus, the Court's decision sanctioned a hybrid duty — mandatory in nature but unenforceable in practice. Note, *Interstate Extradition: Should the Asylum State Governor Have Unbridled Discretion,* 1980 B.Y.U. L. Rev. 576.

In recent times, the Supreme Court has reaffirmed the first part of the *Dennison* holding. *Michigan* v. *Doran,* 439 U.S. 282, 288 (1978) ("Interstate extradition was intended to be a summary and mandatory executive proceeding derived from the language of Art. IV, § 2, cl. 2, of the Constitution.") But the Court has never again ruled squarely on the second issue — judicial enforcement of the duty of an asylum state governor to extradite.[6]

Appellant acknowledges that *Dennison* controls this case, but argues that the lower federal courts are no longer bound by *Dennison*. Appellant claims that the Supreme Court would overrule the second part of *Dennison* if presented with same issue today because it is based on pre-civil war concepts of federal-state relations that no longer are viable in present-day views of federalism. Appellant points out that *Dennison* was decided on the eve of the civil war, at a time when a bitter debate raged in the country between exponents of state sovereignty and advocates of a strong federal government. Appellant suggests that in view of such a climate the Court had no choice but to decide *Dennison* as it did. Accordingly, appellant invites us to depart from the second part of the *Dennison* holding. We decline the invitation.

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[6] In the post-civil war case of *Taylor* v. *Taintor,* 83 U.S. (16 Wall) 366, 370 (1873) the Court in dicta reaffirmed the second part of the *Dennison* holding.

Although appellee had acted in clear contravention of the Constitution in refusing extradition because he questions the severity of the crime specified in appellant's extradition request,[7] we nevertheless are constrained to follow the Supreme Court decision in *Dennison*.

III.

It is well established that Supreme Court decisions are binding on the lower federal courts. It has been suggested that a narrow exception exists when there is strong evidence that the Supreme Court would overrule its prior holding if it had the opportunity to do so. *Minority Police Officers Ass'n* v. *City of South Bend*, 721 F.2d 197, 201 (7th Cir. 1983). Whether or not this is sound judicial policy, we need not decide, for appellant has failed to establish such evidence with respect to *Dennison*.

To support its claim that *Dennison* is no longer good law, appellant relies primarily on dicta in *FERC* v. *Mississippi*, 456 U.S. 742 (1982). In *FERC*, the State of Mississippi challenged provisions of the Federal Public Utility Regulatory Policies Act of 1978 ("PURPA"), which required state utility regulatory commissions and nonregulated utilities to consider the adoption of various approaches to rate structures, terms and conditions of service and regulatory procedures. The Act also authorized the Federal Energy Regulatory Commission ("FERC"), in consultation with state regulatory authorities, to promulgate rules to develop cogeneration and small power facilities. The Act also gave FERC the authority to exempt cogeneration and

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[7] By refusing to extradite Calder, appellee is sitting in judgment on Puerto Rico's actions. In effect, he is accusing Puerto Rico of having a sub-standard of criminal justice. Appellee's actions may lead to retaliatory denials. *See* Note, *Interstate Rendition: Executive Practice and the Effects of Discretion*, 66 Yale L. Rev. 97 (1956). The Framers sought to avoid such interstate friction by couching the extradition clause of the Constitution in mandatory language.

small power facilities from certain state and federal regulations. Petitioners claimed the PURPA was unconstitutional because it constituted an invasion of state sovereignty in violation of the Tenth Amendment.[8]

In holding that PURPA did not violate the Tenth Amendment, the Supreme Court in *FERC* rejected the concept enunciated by the Court in *Dennison* that "the States and the Federal Government in all circumstances must be viewed as coequal sovereigns". *FERC, supra,* 456 U.S. at 761. The *FERC* Court characterized as "rigid" and "isolated" the statement in *Dennison* that Congress " 'has no power to impose on a state officer, as such, any duty whatever, and compel him to perform it.' " *Id.* at 761, *quoting Dennison, supra,* 65 U.S. at 107. The *FERC* Court concluded that, based on modern-day concepts of federalism, "the Federal Government has some power to enlist a branch of state government . . . to further federal ends." *Id.* at 762.

While it is true that the above dicta in *FERC* seem to erode to some extent the underpinnings of *Dennison,* the *Dennison* specific holding that federal courts have no power to compel a state governor to extradite has not been overruled. Rather, *Dennison* is left as an anomaly, to be applied only in the context of extradition.[9] *See Ex Parte Virginia,* 100 U.S. 339,

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[8] The petitioners also claimed unsuccessfully that PURPA exceeded congressional power under the commerce clause.

[9] Recently state courts and commentators have supported the result reached in *Dennison,* largely because the concept of executive discretion in the exercise of the extradition power is so widely accepted among governors. *State of South Dakota* v. *Brown,* 144 Cal. Rptr. 758, 763-64, 576 P.2d 473, 481-82 (1978) (en banc); Note, *Interstate Extradition: Should the Asylum State Governor Have Unbridled Discretion, supra,* at 5. Note, *Rendition: The Governor's Discretion,* 2 Lincoln L. Rev. 48 (1966); Comment, *Interstate Rendition: Executive Practice and the Effects of Discretion, supra,* note 7.

Likewise, in the area of international extradition there has long been an unfortunate dragging of feet on the part of the asylum nation which too often seeks to superimpose its notions of judicial fairness on those of the extraditing

348 (1879) ("remarks made in *Kentucky* v. *Dennison* and in *Collector* v. *Day*, though entirely just as applied to the cases in which they were made, are inapplicable to the case we have now in hand"). Accordingly, we are constrained to hold that *Dennison* controls the instant case.

IV.

To summarize: We hold that appellee acted in clear contravention of the Constitution in looking behind appellant's valid extradition request. Since appellant, however, has failed to establish that the Supreme Court would overrule *Dennison*, we hold that the district court correctly held that it lacked the power to issue a writ of mandamus to compel the Governor of Iowa to extradite Calder to the Commonwealth of Puerto Rico, despite Puerto Rico's valid extradition request.

Despite our firm belief in the proper role of the inferior federal courts in adhering to and not seeking to avoid controlling Supreme Court precedent, we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the extradition clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so. Perhaps the extradition principles articulated in *Dennison* are in the category so aptly described by Judge Cardozo as being infused with "the doubts and misgivings, the hopes and fears, [all] part of the travail of mind, the pangs of death and the pangs of birth, in which pinciples that have served their day expire, and new principles are born."[10]

Affirmed.

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nation, *E.g.*, Timbers and Pollack, *Extradition From Canada To The United States For Securities Fraud: Frustration Of The National Policies Of Both Countries*, 24 Fordham L. Rev. 301 (1955).

[10] Cardozo, The Nature Of The Judicial Process 167 (Yale University Press 1921).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Commonwealth of Puerto Rico,	)	
	)	
Plaintiff,	)	
	)	Civil No.
vs.	)	84-126-E
	)	
Terry E. Branstad and	)	ORDER
State of Iowa,	)	
	)	
Defendants.	)	

[Entered May 22, 1985]

This complaint for a writ of mandamus and declaratory judgment comes before the Court on a stipulated record. Also pending is the defendants' motion to dismiss filed March 6, 1984. Arguments were heard by the Court in Des Moines, Iowa on February 27, 1985. The Court deems these matters fully submitted. For the reasons stated below, the writ of mandamus is denied and the motion to dismiss is granted.

I.

The Governor of Iowa has reused a formal request for the extradition of Ronald Calder from the Governor of Puerto Rico. Puerto Rico argues that this Court should issue a writ of mandamus to compel the Governor of Iowa to extradite Mr. Calder. Puerto Rico admits that there is undisturbed Supreme Court precedent which squarley rejects the claim that man-

damus could issue to compel a state governor to perform his constitutional obligation under the Extradition Clause. *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861). Nonetheless, Puerto Rico argues that this Court need not follow *Dennison* because if the Supreme Court were faced with the same issues today, it would certainly overrule the *Dennison* holding. Plaintiff asserts that modern notions of federalism give federal courts the power to impose and enforce constitutional obligations on state officials and, thus, the rationale employed in *Dennison* would not survive scrutiny today.

A.

In *Dennison*, the Supreme Court was required to interpret the Extradition Clause of the United States Constitution (Article IV, section 2, clause 2), which provides:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

First, the Supreme Court interpreted the Extradition Clause as imposing on the asylum state's governor a mandatory duty to extradite upon demand. *Kentucky* v. *Dennison*, 65 U.S. (24 How.), at 106. Second, however, the Supreme Court ruled that neither the Extradition Clause nor the federal legislation implementing it gave the judiciary the power to enforce the constitutional obligation to extradite. *Id.*, at pp. 107-110. Instead, the execution of this constitutional duty is dependent on the fidelity of the state executive to the federal constitution.

Even after the Civil War and the passage of the Fourteenth Amendment, the Supreme Court continued to recognize the proposition that "there is no means of compulsion" when a governor refuses to extradite a fugitive. *Taylor* v. *Taintor*, 83 U.S. (16 Wall.) 366, 370 (1872).

B.

The issue presented by plaintiff to this Court is whether or not the Supreme Court would overrule *Dennison* and *Taylor* v. *Taintor* and hold that a federal court does have the power to compel a governor to perform his mandatory constitutional duty to extradite a fugitive to a demanding state. In other words, is the rule established in *Dennison* so out of touch with modern legal thinking that this Court is not bound to follow it? The answer to this question is no; this court is not convinced that the Supreme Court would overrule *Dennison*.

The most recent decision regarding the power to enforce the federal constitutional duty to extradite involved Governor Jerry Brown's refusal to extradite Dennis Banks from California to South Dakota. In that case, the Supreme Court of California held

> that while the federal Constitution imposes upon the Governor a mandatory obligation to extradite a fugitive to a demanding state, the Constitution does not empower the courts, federal or state, to enforce that duty by writ of mandate. No case has so held. Rather, the Constitution leaves the faithful execution of the extradition obligation in the hands of the state executive, trusting, in the words of *Dennison,* in the Governor's "fidelity" to the federal Constitution.

State of South Dakota v. *Brown,* 144 Cal. Rptr. 758, 576 P.2d 473, 477 (1978) (in bank). That court also held that state law did not empower state courts to enforce the duty to extradite. In addition, the court in *Brown* noted the general acceptance of the practice of governors of California to occasionally decline to honor a demand for extradition and the reciprocal practice of other governors to decline requests made by the California governor for extradition. Finally, the court stated:

> [S]everal considerations of public policy support and commend an interpretation of the Extradition Act permitting the Governor to exercise some discretion in refusing extradition in an appropriate case. Doubtless, individual circumstances surrounding extradition demands are varied and diverse, thus rendering peculiarly inappropriate the mechanical application of fixed and absolute rules if justice is to be achieved in a particular case.
>
> * * *
>
> We are satisfied . . . that as a matter of public policy courts may not enforce the Governor's duty to comply with extradition demands. Although that duty may be considered mandatory in nature under the constitutional and statutory provisions discussed above, in unusual cases a potential miscarriage of justice may call for that discretionary exercise of "sound judgment." We would not serve the ends of justice if we attempted judicial interference with the Governor's discretion.

State of South Dakota v. *Brown*, 576 P.2d, at 482.

While it is true that jurisprudence regarding the role and power of federal courts has changed a great deal since the Civil War and the passage of the Fourteenth Amendment, it does not necessarily follow that all of the results reached by the court that decided *Dred Scott* on issues regarding the power of federal courts would be reversed today. In other words, the holding in *Dennison* may have a modern-day rational which would result in it being followed by the present Supreme Court. The decision of the Supreme Court of California in *State of South Dakota* v. *Brown* indicates that there are present-day policies which support the holding in *Dennison*. Furthermore, the experience and practice over the past 120 years would

undoubtedly carry a great deal of weight if the present Supreme Court were to rethink *Dennison*.

Accordingly, this District Court cannot say with certainty that the Supreme Court would overrule *Kentucky* v. *Dennison* if confronted with the mandamus issue today. Thus, this Court will follow the holding of *Kentucky* v. *Dennison* and deny the request for a writ of mandamus.

II.

In the alternative, the plaintiff prays for a declaratory judgment to the effect that extradition cannot be denied on grounds not set out in the Constitution or 18 U.S.C. § 3182, the federal statute which implements the extradition clause of the Constitution.

The Federal Declaratory Judgment Act, 28 U.S.C. § 2201, provides:

> In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Under this provision, litigants do not have an absolute right to be heard. Rather,

> [i]t is well established that the Declaratory Judgment Act, 28 U.S.C. § 2201, granted the federal courts discretion "to make a declaration of rights; it did not impose a duty to do so." (Cites omitted).

Alsager v. *District Court of Polk County, Iowa,* 518 F.2d 1160, 1163 (8th Cir. 1975). With respect to the exercise of this discretion, 10A Wright & Miller, *Federal Practice and Procedure:* Civil 2d § 2759, states:

> It is always the duty of the court to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief. The Courts have often quoted with approval Professor Borchard's formulation that:
>
> > The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.
> >
> > One of the most important considerations that may induce a court to deny declaratory relief is that the judgment sought would not settle the controversy between the parties. (Footnotes omitted).

During argument, counsel for plaintiff stated that declaratory relief was being sought on the hope that once a federal court declared the duties impose by the Constitution, the Governor of Iowa would change his position. The Court finds that the issuance of a declaratory ruling would do little to settle the controversy of the extradition of Mr. Calder. Thus, this Court is well within its discretion in denying the prayer for declaratory relief.

IT IS THEREFORE ORDERED that the application for a writ of mandamus is denied.

IT IS FUTHER ORDERED that the motion to dismiss the declaratory judgment claim is hereby granted. Each party shall bear its own costs.

May 21, 1985.

Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT

APPENDIX C

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

JUDGMENT

No. 85-1793SI

Commonwealth of Puerto Rico,	*	
	*	
Appellant,	*	
	*	Appeal from the
vs.	*	United States District
	*	Court for the Southern
Terry E. Branstad, et al,	*	District of Iowa
	*	
Appellees.	*	

[Entered March 28, 1986]

This appeal from the United States District Court was submitted on the record of the said district court, briefs of the parties and was argued by counsel.

Upon consideration of the premises it is hereby adjudged and decreed that the judgment of the district court is affirmed in accordance with the opinion of this Court.

March 28, 1986

A true copy.

ATTEST: s/ Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Commonwealth of Puerto Rico,	)	
	)	
Plaintiff,	)	
	)	Civil Action
v.	)	No. 84-126-E
	)	
Terry E. Branstad and	)	
the State of Iowa,	)	
	)	
Defendants.	)	

STIPULATION OF FACTS

[Filed December 3, 1984]

Come now the plaintiff, the Commonwealth of Puerto Rico, and the defendants, Terry E. Branstad and the State of Iowa, and by counsel do stipulate to the following facts:

1. On or about January 25, 1981 in Aguadilla, Puerto Rico, Army Villalba De Jesus, who was then eight months pregnant was struck by a car driven by Ronald Calder. Her husband, Antonio de Jesus Gonzales, was also struck by Calder's car.

2. Army Villalba and the unborn child died on January 25, 1981.

3. Some hours after the incident, Ronald Calder was brought before Municipal Judge Jose Moreno Babilonia, who found probable cause to charge him with homicide. Calder was rep-

resented by counsel, Carlos Hernandez Perez. Bail was set at $5,000.00 and Calder was released.

4. On February 4, 1981, the case was submitted by the District Attorney to Judge Benito Diaz Laureano for a determination of probable cause for first degree murder and attack with intent to commit murder. *See* Exhibit A.

5. Two lawyers appeared in Calder's defense at the probable cause hearing.

6. Sworn witnesses testified at the February 4th hearing that Calder deliberately attempted to run down Antonio de Jesus Gonzales and Army Villalba in the parking lot of a grocery store after an argument between Calder and de Jesus Gonzales.

7. The witnesses also testified that Calder ran over Army Villalba more than one time.

8. On February 4, 1981, the district court found probable cause to accuse Calder with attack to commit murder and first degree murder with bail set at $5,000 and $10,000.00 respectively. Upon deposit of $5,000.00 cash, Calder was released. *See* Exhibits B and C.

9. On February 4, 1981, Calder signed a copy of the notice summoning him for a preliminary hearing to take place on March 4, 1981.

10. Calder did not appear at the preliminary hearing on March 4, 1981. Bail was increased to $50,000. *See* Exhibit D. (Court document and translation).

11. At the March 4th hearing, the court held that Calder has waived his right to a preliminary hearing due to his absence.

12. On April 2, 1981, Calder's attorneys William Kutmus and Mark Pennington appeared in the office of the District Attorney for Aguadilla and agreed that Calder would appear for a preliminary hearing on April 13, 1981.

13. Calder failed to appear at the preliminary hearing on April 13, 1984.

14. On April 13, 1981, after an unsuccessful search for Calder in various locations, including his established domicile, the court declared the defendant a fugitive from justice, set his bail at $300,000.00 and issued a warrant for his arrest. *See* Exhibits E. (Court document and translation).

15. On April 13, 1981, the Puerto Rican Police notified the Polk County, Iowa Sheriff's Office that Ronald Calder was a fugitive wanted for murder and attempted murder in Puerto Rico. *See* Exhibit F.

16. On April 24, 1981, Calder, with his attorney, surrendered to the jurisdiction of the local court in Polk County, Iowa.

17. On April 24, 1981, Calder posted the $20,000.00 bond set by an Iowa magistrate and was released.

18. On May 15, 1981, Governor Romero Barcelo of Puerto Rico submitted to Governor Robert D. Ray of Iowa a formal request for the extradition of Ronald Calder. *See* Exhibit G.

19. Included in the request were the following documents: an arrest warrant, *See* Exhibit E; a fugitive resolution, *See* Exhibit E; an accusation for first degree murder, *See* Exhibit B; an accusation for attack to commit murder, *See* Exhibit C; and three sworn statements establishing probable cause, one of which identified a photograph of Calder to be that of the fugitive. See Exhibits H, I and J.

20. Counsel for Calder requested an extradition hearing, *See* Exhibit K, and Governor Ray ordered that such a hearing be held on June 17, 1981, *See* Exhibit L.

21. The extradition hearing was conducted by Brice Oakley, legal counsel to Governor Ray. Witnesses for the fugitive were William Kutmus, Mark S. Pennington, Gene Miller and Ronald Calder. *See* Exhibit M. (Exhibit M is a transcript of the first of two tapes made during the hearing. The second tape was destroyed and no record of the later part of the hearing exists).

22. Counsel for Puerto Rico, Eduardo de Jesus Garcia, objected to the form and content of all the evidence presented on behalf of Calder as beyond the scope of extradition hearings as provided by the Uniform Criminal Extradition Act, § 4 (codified at Iowa Code § 820.20).

23. In post-hearing briefs filed with Mr. Oakley on June 24, 1981, the State of Iowa conceded that the extradition request was in proper form and met all statutory documentary requirements, and the parties do hereby stipulate the same.

24. On July 23, 1981, Roberto Buono Grillasca of the Puerto Rico Department of Justice, requested that they be provided with a transcript of the hearing tapes. *See* Exhibit N.

25. On March, 18, 1982, Brice Oakley informed the Attorney General's Office that the second of two tapes had been destroyed in the duplicating process. The first tape was sent to Puerto Rico. See Exhibit O.

26. After the extradition hearing, representatives for Calder and the District Attorney in Puerto Rico attempted to work out a plea bargain agreement. These negotiations ultimately failed because of a fundamental disagreement on the terms. Calder insisted that the "bargain" be guaranteed in writing prior to his return to Puerto Rico. Puerto Rico's position was that the law of criminal procedure in Puerto Rico does not invest the district attorney with the authority to guarantee a plea agreement. Puerto Rico believed the charges had to be reduced and a plea entered by a judge upon the defendant's appearance before him. Calder's attorneys believed a written agreement could be enforced in Puerto Rico as in most American jurisdictions. *See* Exhibit P.

27. Governor Ray and Governor Romero Barcelo also attempted to aid in negotiating a resolution of the matter. However, these attempts were unsuccessful and on December 28, 1981, Governor Ray informed Governor Romero Barcelo of his

decision to deny the request for extradition of Ronald Calder. *See* Exhibit Q.

28. Puerto Rico renewed its extradition request to Governor Terry E. Branstad after he succeeded Robert Ray as Governor of Iowa. Governor Branstad denied the request.

Respectfully submitted,

s/

Kathleen Heenan McGuan
Jerris Leonard
Law Office of Jerris Leonard, P.C.
900 17th St., N.W., Suite 1020
Washington, D.C. 20006
(202) 872-1095

Counsel for Plaintiff

s/

Brent Appel, Esquire
Assistant Attorney General
13th & Walnut Streets
Hoover State Office Building
Des Moines, IO 50319
(809) 763-0106

Counsel for Defendants

[Selected Exhibits reprinted on following pages]

[Exhibit G]

EXECUTIVE CHAMBER

THE GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO

TO THE GOVERNOR OF THE STATE OF IOWA

WHEREAS: It appears by the papers required by the Statute of the Commonwealth of Puerto Rico which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this Commonwealth, that

RONALD CALDER JOHNSON

stands charged, and is pending trial for the crimes of First Degree Murder and Attempted Murder, which I certify to be crimes under the Laws of this Commonwealth, and it having been represented to me that a court of justice in this jurisdiction has determined that there is a probable cause to try the defendant for the crimes he has been accused of, and that he was present in the Island of Puerto Rico at the time of the commission of these crimes and is now a fugitive from the Justice of this Commonwealth.

NOW THEREFORE: Pursuant to the provisions of the Constitution and Laws of the United States in such case made and provided, I do hereby require that

RONALD CALDER JOHNSON

be delivered to MESSRS. ROBERTO BUONO GRILLASCA, EDUARDO A. DE JESUS GARCIA, JOSE A. FLORES and ARMANDO TAPIA, Special Agents who are hereby author-

ised to receive and convey him to the Commonwealth of Puerto Rico, here to be dealt with according to Law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Commonwealth of Puerto Rico to be affixed, in the City of San Juan, this 15th day of MAY, A.D., nineteen hundred and eighty-one.

CARLOS ROMERO BARCELO
Governor

ATTEST: s/

Under Secretary of State

[Exhibit D]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT
AGUADILLA PART
Office of Judge of Peace

THE UNITED STATES OF AMERICA THE PRESIDENT OF THE UNITED STATES THE PEOPLE OF PUERTO RICO	CRIMINAL NO. G81-90- y 91 FOR ATTACK TO COMMIT MURDER AND MURDER IN THE FIRST DEGREE DATE AND PLACE OF EVENTS: JANUARY 25, 1981, AGUADILLA, P.R. TO BE FILLED AT: SUPERIOR COURT AGUADILLA, P.R. PART
VS.	
RONALD M. CALDER JOHNSON COND. LAGUNA GARDENS, BD. 4, APPO 5-L, Condado Isla Verde San Juan, Puerto Rico	

WARRANT OF ARREST

TO THE CHIEF OF PUERTO RICO STATE POLICE, THE MARSHALL OF THIS COURT:

You are hereby ordered to arrest forthwith RONALD M. CALDER, bringing him without any undue delay before me at AGUADILLA, or before the nearest more accessible magistrate, to answer for the charge(s) mentioned above, and to give him notice that I have set bail at $50,000.00 IN CASH in order for him to remain at provisional liberty, hereof fail not.

AGUADILLA, P.R., MARCH 4, 1981.

ARREST HIM BY DAY OR BY NIGHT.

(S) JOSE L. CAPELLA
Judge (Superior)

[Certificates of Service and of Translation Omitted]

[Exhibit E]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT CRIMINAL PART
AGUADILLA, P.R. PART

THE PEOPLE OF PUERTO RICO

VS.

CRIMINAL NO. G81-90
G81-91

RONALD M. CALDER JOHNSON
LAGUNA GARDENS COND., BLDG. 4,
APPO. 5, L-CONDADO ISLA VERDE
SAN JUAN, PUERTO RICO

FOR: ATTACK TO COMMIT
MURDER AND MURDER
IN THE FIRST DEGREE

RESOLUTION

WHEREAS: It appears in this case from the records of the Marshal of this Court and of the Police, filed in this Court, that the defendant has been sought in various places and specifically in that of his known domicile, without being able to locate him for the purpose of:

FOR THE ACT OF ARRAIGNMENT.

WHEREAS: This Court has found itself prevented from continuing the proceedings in this case due to the fault of the defendant who has been evading Justice.

THEREFORE: This Court declares the defendant in the caption hereon, a FUGITIVE FROM JUSTICE, and orders his arrest day or night (without bail) (with bail of $300,000.00) and directs also that the Clerk of this Court issue the corresponding warrants of arrest for this conveyance to the Superintendent of the Puerto Rico Police and all Marshalls of the First Instance Court of Puerto Rico for the purpose of enforcing this order by arresting this defendant and conduct-

ing him to the proper officer under whose custody he shall remain in confinement and at the disposal of this Court until his legal discharge. Any statutory term which might be invoked by the defendant pursuant to any of the provisions of Rule 64 of the Criminal Procedure, is hereby declared inoperative.

GIVEN AT AGUADILLA, P.R., on APRIL 13, 1981.

(S) JOSE L. CAPELLA CAPELLA

Judge

[Certificate of Translation Omitted]

[Exhibit E]

W A R R A N T

TO ALL MEMBERS OF THE PUERTO RICO POLICE and ALL MARSHALLS OF THE COURT OF FIRST INSTANCE:

Pursuant to the Resolution given by this Court, which appears on the face of this Document, I hereby issue this Warrant of Arrest commanding you to effect the arrest, by day or by night, of the said defendant and to deliver him to the proper officer under whose custody shall remain in confinement and at the disposal of this Court until his legal discharge.

Issued under my signature and the official seal of this Court, at AGUADILLA, P.R., today, APRIL 13, 1981.

(S) DANIEL BADILLO BELLO

CLERK

[Certificates of Service and of Translation Omitted]

[Exhibit B]

IN THE SUPERIOR COURT OF PUERTO RICO
AGUADILLA PART

IN THE NAME AND BY THE AUTHORITY OF THE PEOPLE OF PUERTO RICO

UNITED STATES OF AMERICA THE PRESIDENT OF THE U.S.	SS
	CRIMINAL NO.____
THE PEOPLE OF PUERTO RICO	
	FOR: MURDER IN THE FIRST DEGREE
vs.	

RONALD M. CALDER JOHNSON
Laguna Gardens Cond. Bd. 4,
Appo. 5L-Condado Isle Verde,
San Juan, P.R.

The District Attorney, by this information, accuse RONALD M. CALDER JOHNSON, residing at Laguna Gardens Cond., Bldg. 4, APT. 5L Condado, Isle Verde, San Juan, P.R. of the crime of felony, to wit: MURDER IN THE FIRST DEGREE committed as follows:

Defendant RONALD CALDER JOHNSON, on or about the 25th of January of 1981, in Aguadilla, Puerto Rico, which is part of the Superior Court of Puerto Rico, Aguadilla Part, illegally, willfully, criminally, with malice, premeditation and deliberation and with the firm purpose of killing, demonstrating to have a perverted and malign heart, ran over several times with his motor vehicle over Army Villalba, a human being, causing her such serious injuries that moments later caused her death.

These facts are contrary to the law applicable to this case to the peace and dignity of The People of Puerto Rico.

s/ Luis A. Fossé Milan

DISTRICT ATTORNEY

The previous information is based in probable cause determined by a Judge, as provided by Rule No. 23 of the Criminal Procedures Rules, establishing the procedures for Preliminary Hearings and in the conditions mentioned in the back of this information; solemnly believing that just cause does exist to present it in Court.

s/ Luis A. Fosse Milan

DISTRICT ATTORNEY

Sworn and signed before me, this February 27, 1981.

s/ Elidia Salas

COURT SECRETARY

1. AGENT FELIX HERNANDEZ LOT—POLICE STAT. AGUADILLA, P.R. AGT. 9-1350
2. CAROLL CONCEPCION—BO.T. LONAL, BUZON 1620, AGUADA, P.R.
3. ANTONIO DE JESUS GONZALEZ—BASE RAMEY, CIRCULO E-3, Aguadilla, P.R.
4. ROSENDO DECLET OTERO—CALVACHE, BUZON RURAL 1022, RINCON, P.R.

5. LUIS A. BRAVO GONZALEZ—APARTADO 253, SAN ANTONIO, P.R.
6. MYRIAM OLIVERA PAGAN—VILLAS DE RAMEY 84, Aguadilla, P.R.
7. TOMASA WILSON JONES—Calla A 104, Base Ramey, Aguadilla, P.R.
8. PEDRO RODRIGUES BADILLO—Car. 459, Bo. Montana, C/D Gallara, Aguadilla, P.R.
9. EUGINE MILLER—Calla Leman 128, Base Ramey, Aguadilla, P.R.
10. DR. JOSE M. ACOSTA—Patologo, Hospital Sub-Regional, Aguadilla, P.R.
11. AIA TOMAS SANTANA 9—8041— Fotografo, Ctal. Policia, Aguadilla, P.R.
12. ROSA I. MARRERO—Bo. Campo Alegre, Apdo. 116, Aguadilla, P.R.
13. PEDRO DEL VALLE Urb. Medina, Calla F—15, Isabela, P.R.
14. WILFREDO RAMOS SOTO—Bo. Martinica, Apdo. 60, Sant Antonio, P.R. 00752

CONDITION IN WHICH THE JUDGE DETERMINED PROBABLE CAUSE

(X) As per preliminary hearing; after examining under oath all witnesses taken before him.

( ) After hearing the accused waived his rights to a preliminary hearing, by means of a written request made before the hearing.

( ) After having the accused personally waived his rights to a preliminary hearing at any time during the hearing.

( ) After the accused failed to attend the preliminary hearing to which he was properly summoned.

[Certificate of Translation Omitted]

[Exhibit C]

IN THE SUPERIOR COURT OF PUERTO RICO
AGUADILLA PART

IN THE NAME AND BY THE AUTHORITY OF THE PEOPLE OF PUERTO RICO

UNITED STATES OF AMERICA THE PRESIDENT OF THE U.S.	SS
	CRIMINAL NO.
THE PEOPLE OF PUERTO RICO	G-81-90
vs.	FOR: ATTACK TO COMMIT MURDER
RONALD M. CALDER JOHNSON Cond. Laguna Gardens, Bd. 4, Apto. 5L Condado, Isla Verde, San Juan, P.R.	(FELONY)

The District Attorney, by this information, accuse RONALD M. CALDER JOHNSON, residing at COND. LAGUNA GARDENS, Bd. 4, Apto. 5L, Condado, Isla Verde, San Juan, P.R. of the crime of felony, to wit: _____

_____

committed as follows:

Defendant, RONALD CALDER JOHNSON, on or about the 25th of January of 1981, in Aguadilla, Puerto Rico, which is part of the Superior Court of Puerto Rico, Aguadilla Part, illegally, willfully, criminally, with malice, premeditation and deliberation and with the firm purpose of killing, demonstrating to have a perverted and malign heart, attempted to run over with his motor vehicle over ANTONIO DE JESUS GONZALES, a human being, however only hitting him in his right foot, with the intention of causing the death of said ANTONIO DE JESUS GONZALES.

These facts are contrary to the law applicable to this case to the peace and dignity of The People of Puerto Rico.

s/ Luis A. Fosse Milan

DISTRICT ATTORNEY

The previous information is based in probable cause determined by a Judge, as provided by Rule No. 23 of the Criminal Procedures Rules, establishing the procedures for Preliminary Hearings and in the conditions mentioned in the back of this information; solemnly believing that just cause does exist to present it in Court.

s/ Luis A. Fosse Milan

DISTRICT ATTORNEY

Sworn and signed before me, this February 27, 1981.

s/ Elidia Salas

COURT SECRETARY

1. AGENT FELIX HERNANDEZ LOT—POLICE STAT. AGUADILLA, P.R. AGT. 9-1350
2. CAROLL CONCEPCION—BO.T. LONAL, BUZON 1620, AGUADA, P.R.
3. ANTONIO DE JESUS GONZALEZ—BASE RAMEY, CIRCULO E-3, Aguadilla, P.R.
4. ROSENDO DECLET OTERO—CALVACHE, BUZON RURAL 1022, RINCON, P.R.

5. LUIS A. BRAVO GONZALEZ—APARTADO 253, SAN ANTONIO, P.R.
6. MYRIAM OLIVERA PAGAN—VILLAS DE RAMEY 84, Aguadilla, P.R.
7. TOMASA WILSON JONES—Calla A 104, Base Ramey, Aguadilla, P.R.
8. PEDRO RODRIGUES BADILLO—Car. 459, Bo. Montana, C/D Gallara, Aguadilla, P.R.
9. EUGINE MILLER—Calla Leman 128, Base Ramey, Aguadilla, P.R.
10. DR. JOSE M. ACOSTA—Patologo, Hospital Sub-Regional, Aguadilla, P.R.
11. AIA TOMAS SANTANA 9—8041— Fotografo, Ctal. Policia, Aguadilla, P.R.
12. ROSA I. MARRERO—Bo. Campo Alegre, Apdo. 116, Aguadilla, P.R.
13. PEDRO DEL VALLE Urb. Medina, Calla F—15, Isabela, P.R.
14. WILFREDO RAMOS SOTO—Bo. Martinica, Apdo. 60, Sant Antonio, P.R. 00752

CONDITION IN WHICH THE JUDGE DETERMINED PROBABLE CAUSE

(X) As per preliminary hearing; after examining under oath all witnesses taken before him.

( ) After hearing the accused waived his rights to a preliminary hearing, by means of a written request made before the hearing.

( ) After having the accused personally waived his rights to a preliminary hearing at any time during the hearing.

( ) After the accused failed to attend the preliminary hearing to which he was properly summoned.

[Certificate of Translation Omitted]

[Exhibit H]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
DISTRICT COURT

THE UNITED STATES OF AMERICA)
THE PRESIDENT OF THE U.S.
THE PEOPLE OF PUERTO RICO)

VS.)

RONALD M. CALDER JOHNSON)

SWORN STATEMENT OF WITNESS
ANTONIO DE JESUS GONZALEZ

In Aguadilla, Puerto Rico, on January 26, 1981, I, ANTONIO DE JESUS GONZALEZ, residing in Aguadilla, Puerto Rico, of age, appear before this Court, and spontaneously under oath, testify:

DISTRICT ATTORNEY: Raise your right hand. Do you swear to declare the truth and nothing but the truth about what is asked to you in this investigation?

WITNESS: I do.

D.A.: Your name?

W.: ANTONIO DE JESUS GONZALEZ.

D.A.: Where do you live?

W.: Circle E, 331B, Ramey Base, Aguadilla, Puerto Rico 00604

D.A.: Yesterday, Sunday, 25 of January, 1981, in the evening, your wife los:

her life as a result of an incident, please explain what happened.

W.: In the afternoon we went out for a ride with the kids around the area of San Antonio and the Isabela beach front. Then we returned to the Base and went to the Trino Store to buy some milk and juice. My wife stayed in the car with the kids. I bought the groceries and returned to the car to give them to my wife through the window, she said that the car that was parked alongside had hit our car in the back. Then I checked the car, and told her "there is no damage, let's go home". I noticed that car she referred to was a light blue Mustang. I was starting the engine of my car when two individuals came out of the store to get inside their car (the light blue Mustang). My wife told me that those were the same who had hit our car. The driver of the car was impatient and did not wait for me to back out as I was putting on my seat belt. He suddenly opened his door and hit the right side of my car. I kept calm and proceeded to back out, it was at this time that he said to me "You son of a bitch, puertorican, get out of the way or I'll push you out". Here, I got a little bit angry and get out of the

car to tell him that was no way to talk to a fellow citizen. Then he started screaming again, "You son of a bitch, puertorican, get out of the way or I'll push you out". Then he started his car and started moving his car backwards and forward trying to get my car out of place. At this time I got worried because my family was inside my car. Then I asked him to get out of his so we could talk this over. Then the two individuals got out of the car aggressively coming towards me and insulting me. When I noticed this I told them, "Hold on, get back in the car, I don't want any problems, I'll call the Police", then they started hitting me, my wife got out of the car and was trying to get them off me, another person who had been talking on the phone also came over and tried to help. I was able to get away from them and tried to defend myself with a cane I had in my car. Then the one who been driving got inside his car, I thought he was leaving. I was standing with my wife in back of my car, then he drove his car towards us, first he hit me with his car, and I was thrown to the side. Then he ran over my wife several time, moving his car forward and

backwards. He then backed up and fled. The Police arrived soon thereafter and I told him that the individuals were in front of the Taino Store and then I went to attend my wife. The Police took my wife to the hospital. I was then informed that at the hospital they had tried to save the child my wife was carrying (she was 8 month's pregnant) by putting the baby in an incubator, but the baby died. It was a boy.

DISTRICT ATTORNEY: Do you have anything else regarding this matter?

WITNESS: That this is the same sworn statement I gave before District Attorney JUAN JOSE NOLLA, on January 26, 1981.

(S) _____
DEPONENT

Affidavit No. 146

Sworn and subscribed before me, today May 14th, 1981.

(S) _____
DISTRICT JUDGE

[Exhibit J]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
DISTRICT COURT

THE UNITED STATES OF AMERICA)
THE PRESIDENT OF THE U.S.
THE PEOPLE OF PUERTO RICO)

VS.)

RONALD M. CALDER JOHNSON)

SWORN STATEMENT OF WITNESS ROSA I. MARRERO

In Aguadilla, Puerto Rico, on January 28, 1981, I, ROSA I. MARRERO, residing in Aguadilla, Puerto Rico, of age, appear before this Court, and spontaneously under oath, testify:

DISTRICT ATTORNEY: Raise your right hand. Do you swear to declare the truth and nothing but the truth about what is asked to you in this investigation?

WITNESS: I do.

D.A.: Your name?

W: ROSA I. MARRERO.

D.A.: Where do you reside?

W: #121, Campo Alegre, Box 116, Victoria Station.

D.A.: On Sunday 25 January of 1981, around 8:00 P.M. or so, some events took place in front of the TAINO Store in Ramey Base, in which MRS. ARMY VILLALBA

lost her life. Please tell what you know about this matter?

W: I was at the TAINO Store buying some groceries. When I was paying the cashier she told me that there was a fight outside in which some northamericans where involved. I heard a small boy saying, "Daddy, daddy". I went outside with Pedro Del Valle who was with me, we stood there watching. There were too americans hitting one puertorican and a lady who was pregnant trying to stop the fight, while the northamericans kept saying, "Let's kill him". Then I don't know if they quit fighting or someone broke the fight, but the puertorrican got up with blood on his forehead and marks of punches he had received, and went to his car and got something out, I could not tell at that time what it was. Then the northamerican said, "Let's go he is getting a gun". He started the car and in reverse got out of his parking spot. Then the puertorrican went neared the car with something in his hand, it was not a gun, then the northamerican drove his car towards the puertorrican and his wife. The puertorrican fell to the side and his wife fell under the car when they were hit by the car. Then

he moved the car forward, and backwards, about three times forward and three times backwards; the woman was stuck under the car, the last time he moved the car backwards the woman was released and a car's tire pass over her. The woman who was in an advanced pregnancy state was completely full on blood and vomit. Then the northamerican fled. There were two of them, one wearing beard and the one who was driving. Then the puertorrican started crying over his wife's body and their son (about 7 years old) who had seen everything, was in shock screaming, "why my mother, why my mother". Inside the car was a little girl about 1½ years old. I asked the cashier of the TAINO Store to call an ambulance. Then the police arrived. The northamerican parked his car a little further away from the site and then returned on foot. All of the witnessed told the police that he had done it. Then another police car arrived and took the woman out of there.

DISTRICT ATTORNEY: Do you have anything else regarding this matter?

WITNESS: That this is the same sworn statement I gave before District Attor-

ney JUAN JOSE NOLLA, on January 28, 1981.

(S) _____

DEPONENT

Affidavit No. 147

Sworn and subscribed before me, today May 14th, 1981.

(S) _____

DISTRICT JUDGE

[Exhibit I]

IN THE DISTRICT COURT OF PUERTO RICO
AGUADILLA, P.R. PART

THE PEOPLE OF PUERTO RICO)	
	AFFIDAVIT IN AID
VS.)	
	OF EXTRADITION
RONALD CALDER JOHNSON)	

SWORN STATEMENT

Comes now ANTONIO DE JESUS GONZALEZ, of age and a resident of Aguadilla, Puerto Rico, who after being duly sworn deposes and states:

That the attached photograph which he has initialed is that of the northamerican who is charged in Puerto Rico with First Degree Murder and Attempted Murder as a result of the incidents which took place in Aguadilla, Puerto Rico on Sunday 25 January, 1981.

And that the name of the person on the photograph is RONALD CALDER JOHNSON, and that RONALD CALDER JOHNSON is accused of causing the death of his wife, ARMY VILLALBA; and that RONALD CALDER JOHNSON is also pending charges of trying cause the deponent's death.

He knows the defendant RONALD CALDER JOHNSON personally as he was an eye witness to the events that caused his wife's death.

IN AGUADILLA, PUERTO RICO, on 14th OF MAY OF 1981.

Sworn and subscribed before me Carlos De J. Rivera, a Municipal Court Judge of Aguadilla, Puerto Rico.

Aff. #148

s/ _____ s/ _____

DEPONENT MUNICIPAL COURT JUDGE

[Photograph omitted]

[Exhibit Q]

Office of the Governor
STATE CAPITOL
DES MOINES, IOWA 30319

ROBERT D. RAY
GOVERNOR

December 28, 1981

The Honorable Carlos Romero-Barcelo
Governor of the Commonwealth of Puerto Rico
LaFortaleza
San Juan, Puerto Rico 00901

Dear Governor Romero-Barcelo:

In re: Extradition of RONALD CALDER (JOHNSON)

Since my letter to you of September 29, and yours to me of October 28, 1981, relative to the above entitled matter, there has been additional communication between and among representatives of our respective governments. It has focused on a change to a more realistic charge against Mr. Calder. These dialogues were mostly initiated by our officials in Iowa.

Earlier this month there was some discussion about Puerto Rico amending its letters of extradition and forwarding them to my office requesting a Governor's warrant on the charge of manslaughter. I believed that would be a significant step which could likely achieve a resolution of this entire matter.

Disappointingly, however, these efforts to secure a definitive response to that possibility from Attorney General Reichard have been met with requests for even more time and delay.

I have to conclude that since this matter has been pending for so long that all of the conversations and communications

amount to an unwillingness to get the criminal charge to something more justifiable.

We have truly made an effort to resolve the differences in this particular case and I regret that it has lingered on for such a long period of time. I think both you and I had hoped we could come to a mutually satisfactory resolution. Now, however, I must tell you that I still have concerns about the charge that was filed against Mr. Calder.

Mr. Brice Oakley will be advising your office of the action I am taking but, nonetheless, I want to formally inform you that on this date I am respectfully denying the request to extradite Ronald Calder (Johnson) from the State of Iowa to the Commonwealth of Puerto Rico.

Best regards.

Sincerely,

s/
Robert D. Ray
Governor